

LONG ISLAND OFFICE

-----X Docket#  
UNITED STATES OF AMERICA, : 06-cr-210 (ETB) (LDW)  
:  
- versus - : U.S. Courthouse  
: Central Islip, New York  
GREG DEPETRO, :  
Defendant : March 30, 2006  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING  
BEFORE THE HONORABLE E. THOMAS BOYLE  
UNITED STATES MAGISTRATE JUDGE

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Rosalie Lombardi

1 THE CLERK: Calling case 06-cr-210, United  
2 States v. DePetro.

3 Counsel, please state your appearance for the  
4 record.

5 MR. RYAN: For the government, your Honor,  
6 Burton Ryan.

7 MR. RABIN: For the defendant, Jeffrey Rabin  
8 (phonetic).

9 Good morning, your Honor.

10 THE COURT: Good morning. I believe this is  
11 Mr. DePetro's first appearance before the Court.

12 Is that correct?

13 MR. RABIN: That's correct, your Honor.

14 THE COURT: Mr. DePetro, what I would like to  
15 do is arraign you initially with regard to this charge  
16 and that is to advise you as to the nature of the charge  
17 and certain rights that you have. I'm going to ask you  
18 at this point to enter a plea of not guilty to the  
19 information before the Court. And then it's my  
20 understanding that you wish to change that plea and we'll  
21 get into that a little bit later.

22 I have before the Court a one count information  
23 charging a conspiracy to money laundering and I'm going  
24 to ask the government if they can put some flesh and  
25 blood on this charge because I find it personally very

**Proceedings**

1 confusing.

2 MR. RYAN: Yes, Judge.

3 THE COURT: The objects of the conspiracy; what  
4 happened here.

5 MR. RYAN: Judge, the defendant was in a  
6 business, New York Acoustic, in which he had a conspiracy  
7 and an association with the name -- with an individual by  
8 the name of Joseph A. Costello (phonetic). Mr. Costello  
9 ran an illegal check cashing business that was  
10 unlicensed, that did not file currency transaction  
11 reports for transactions over \$10,000. And did not  
12 maintain any record of the checks.

13 Mr. Costello also solicited his clients to  
14 write checks made out to fictitious companies or to prior  
15 customers which would then be forged and cashed, so that  
16 the businesses that provided him the checks would receive  
17 back the money without leaving any paper trail or any  
18 record of the fact that they were the ones receiving the  
19 money.

20 In essence, Joseph A. Costello was in business  
21 between the years 1995 and November 30, 2004, cashed over  
22 \$700 million worth of checks in the New York Metropolitan  
23 area with various companies providing them with  
24 untraceable cash which they then used to -- that was  
25 received without filing of any currency transaction

**Proceedings**

1 reports which they then used to the intent to avoid IRS  
2 income taxes, to pay payroll, to avoid having to pay  
3 taxes to their employees, withhold taxes from their  
4 employees, pay union benefit dues to their employees who  
5 received cash, provide the basis for other frauds, bank  
6 frauds, federal program frauds, by paying people in  
7 connection with federally funded construction by -- and  
8 mail frauds by providing them these forged or false  
9 checks as receipts which they could then use as  
10 deductions against their own expenses and fraudulently  
11 deduct them for purposes for which were not accurate on  
12 their own returns.

13           This caused a simple tax avoidance scheme to  
14 become a money laundering scheme in the millions and  
15 hundreds of millions of dollars.

16           THE COURT: This is wrongful theft (inaudible)  
17 benefit plans?

18           MR. RYAN: Yes, Judge, because union benefit  
19 and pension funds are trust funds, much like withholding  
20 funds that are due and owing from the employers at the  
21 time they are earned by the employee, so that if you had  
22 a union employee that worked a certain number of hours,  
23 that union benefit and pension fund was immediately due  
24 that amount of money and the employer -- any funds the  
25 employer had that were within the corporation were held

Proceedings

1 in trust for that. And, therefore, the failure to pay  
2 that money is an embezzlement from a union employee or  
3 pension benefit fund.

4 THE COURT: Now, let me ask you a question and  
5 I ordinarily wouldn't go through this in this detail but  
6 I don't have the complaint. It's just the way the many  
7 cases start off. My first question (inaudible) and I  
8 want your client to understand what the government's  
9 theory of the case is (inaudible).

10 Now, you have four objects of this conspiracy  
11 that are set forth --

12 MR. RYAN: Yes, Judge.

13 THE COURT: -- in your information?

14 MR. RYAN: There are a number of different  
15 objects. Now, let me go through them, so that it's clear  
16 what the intention was. The objects of the financial  
17 transactions which was the cashing of the checks, which  
18 effected interstate commerce were with the intent to  
19 promote on the future criminal activity of cashing the  
20 checks, the underlying act which is either the mail  
21 fraud, the bank fraud, the pension fund fraud, the  
22 federal program fraud, that I previously discussed.

23 So, promoting those, continuing to promote  
24 those by the cashing of these checks and the using of the  
25 money, would be one way to complete this conspiracy.

1 THE COURT: So, that's subdivision A --

2 MR. RYAN: That would be subdivision A, Judge.

3 THE COURT: -- which is the first object of the  
4 conspiracy.

5 MR. RYAN: That's the first object of the  
6 conspiracy. The second one --

7 THE COURT: Before we do that (inaudible)  
8 government's theory with regard to 7201, 7206 of the IRS  
9 --

10 MR. RYAN: Well, the reason why you would want  
11 to take cash out of your corporation, Judge, in a way  
12 that couldn't be traced would be -- or to divert income  
13 checks coming into your corporation would be that you  
14 would not have to report them to the internal revenue  
15 service and claim that it was income to the corporation  
16 or to you.

17 THE COURT: So, 7201 is the willful failure to  
18 file; intending not to file income tax returns with  
19 regard to these sums.

20 MR. RYAN: Right. And 72 -- that's correct,  
21 Judge. In 7206, it's essentially just a false filing.

22 THE COURT: False statement.

23 MR. RYAN: False statement relative to --

24 THE COURT: In this case it would be an  
25 omission or a false statement.

1 MR. RYAN: It could be an omission or it could  
2 be, Judge, since many of the checks were made out to  
3 former customers or even fictitious companies, names  
4 supplied by Mr. Costello, the receipt and the use of  
5 those checks given to an accountant and used as a false  
6 deduction in the books and records of the corporation  
7 would make the tax return false.

8 THE COURT: So, the second object is the intent  
9 on willfully avoiding paying the taxes by not filing a  
10 return with regard to these --

11 MR. RYAN: To the money; these sums of monies.

12 THE COURT: And secondly, 7206, falsely state  
13 or omit to state the amount of these items --

14 MR. RYAN: That would correct, Judge.

15 THE COURT: -- and any return --

16 MR. RYAN: That's correct, Judge.

17 THE COURT: -- filed by the defendant or his  
18 corporation.

19 MR. RYAN: Correct.

20 THE COURT: All right.

21 MR. RYAN: The third --

22 THE COURT: (inaudible).

23 MR. RYAN: The third method by which this  
24 conspiracy could be completed would be that the  
25 transactions were designed to conceal and disguise the

## Proceedings

1 source of the money. That is, once you've used the --  
2 once you cash the check, either from a diverted income  
3 check or from a false check written or a check written by  
4 a corporation, the fact that you had this cash taken away  
5 from your corporation or business and then used it for  
6 other purposes, you did not want to let anyone to know  
7 that you were taking money out of your corporation,  
8 either legitimately or illegitimately through stealing  
9 it. So you wanted to hide the fact that this money came  
10 from those sources. And that would be why cash was used  
11 similar to why drug dealers use cash; to hide that it's  
12 from a drug transaction.

13 THE COURT: And the last object of the  
14 conspiracy?

15 MR. RYAN: And the last object of the  
16 conspiracy could be completed by the individuals knowing  
17 that by giving the checks to Mr. Costello, that he did  
18 not file, that he was not going to file any currency  
19 transaction report and he was not going to maintain a  
20 record reflecting that the individual who received the  
21 cash actually received the cash. Any one of those four  
22 purposes would complete the criminal activity.

23 THE COURT: And on the government's theory of  
24 the case, who are the co-conspirators here?

25 MR. RYAN: The co-conspirators, Judge, are



**Proceedings**

1 Mr. Joseph A. Costello, and his customers.

2 THE COURT: At this time, how does your client  
3 plead to the information before the Court?

4 MR. RABIN: He pleads not guilty at this time,  
5 your Honor.

6 THE COURT: Mr. DePetro, you have a right to  
7 have this plea taken before Judge Wexler. He is going to  
8 be the sentencing judge in this case. Alternatively, you  
9 can choose to have the plea taken before me today.

10 At the end of the proceeding, I will make a  
11 recommendation on record to Judge Wexler as to whether  
12 the plea was entered knowingly and intelligently and  
13 voluntarily. And then he will review (inaudible).

14 THE DEFENDANT: Yes.

15 THE COURT: Do you (inaudible) before me today?

16 THE DEFENDANT: Yes.

17 THE COURT: There shouldn't be any surprises  
18 here. You and your attorney went through the script and  
19 I am going to go through it with you now. And that will  
20 be the primary basis for the proceedings (inaudible).

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: I am going to ask the courtroom  
23 deputy to swear you in.

24 **G R E G D E P E T R O ,**

25 **having been first duly sworn, was examined and**

1 testified as follows:

2 THE CLERK: State your name for the record,  
3 please.

4 THE DEFENDANT: Gregory DePetro.

5 THE COURT: So you have been sworn in at this  
6 time. So, it's very, very important that you do so  
7 (inaudible). If there's anything you don't understand in  
8 these proceedings, just ask and I will clarify it. If  
9 there's anything that you don't understand as far as any  
10 of these questions, (inaudible) go through, don't  
11 hesitate to ask.

12 THE DEFENDANT: Okay.

13 THE COURT: Could you please state your full  
14 name for the record.

15 THE DEFENDANT: Gregory DePetro.

16 THE COURT: And your age, please?

17 THE DEFENDANT: 56.

18 THE COURT: Are you a citizen, are you not?

19 THE DEFENDANT: Excuse me?

20 THE COURT: You're a citizen of the United  
21 States?

22 THE DEFENDANT: Yes.

23 THE COURT: And your highest schooling or  
24 education?

25 THE DEFENDANT: Twelfth grade.

1 THE COURT: And are you presently or have you  
2 recently been under the care of a physician or a  
3 psychiatrist?

4 THE DEFENDANT: No.

5 THE COURT: In the past 24 hours, have you had  
6 any narcotic drugs?

7 THE DEFENDANT: No.

8 THE COURT: Any medicine or pills or had any  
9 alcoholic beverage?

10 THE DEFENDANT: No.

11 THE COURT: Have you ever been hospitalized or  
12 treated for narcotic addiction?

13 THE DEFENDANT: No.

14 THE COURT: Is your mind clear as you stand  
15 here today?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand what the purpose  
18 of this proceeding is?

19 THE DEFENDANT: Yes.

20 THE COURT: You understand you're pleading to  
21 the information that's before the Court.

22 THE DEFENDANT: Correct.

23 THE COURT: Mr. Rabin, you've discussed this  
24 case with your client, have you not?

25 MR. RABIN: Yes, your Honor.

1 THE COURT: And in your opinion, does he  
2 understand the rights that he'll be waiving by pleading  
3 guilty?

4 MR. RABIN: Yes, he does.

5 THE COURT: And in your opinion, is he capable  
6 of understanding the nature of these proceedings and  
7 assisting in his own defense?

8 MR. RABIN: Yes.

9 THE COURT: Do you have any doubt as to your  
10 client's competency to plead at this time?

11 MR. RABIN: None whatsoever.

12 THE COURT: Mr. DePetro, you have the right to  
13 continue in your plea of not guilty.

14 Do you understand that you have that right?

15 THE DEFENDANT: Yes.

16 THE COURT: If you were to continue in that not  
17 guilty plea, under the Constitution and laws of the  
18 United States, you would be entitled to a speedy and a  
19 public trial by a jury with the assistance of your  
20 attorney with regard to this charge.

21 Do you understand that you have that right?

22 THE DEFENDANT: Yes.

23 THE COURT: At a trial, you would be presumed  
24 to be innocent and the government would have to overcome  
25 that presumption and prove your guilt by competent

1 evidence, beyond a reasonable doubt and you would not  
2 have the right if the government failed to do that, you  
3 would have to show in any way or prove that you're  
4 innocent of the offense.

5 And if the government failed to do that, the  
6 jury would have an duty to find you not guilty.

7 Do you understand that you have those rights?

8 THE DEFENDANT: Yes.

9 THE COURT: During the course of a trial, the  
10 witnesses for the government would have to come to court  
11 and testify in your presence. And your attorney would  
12 have the right to cross-examine those witnesses for the  
13 government. Your attorney could object to evidence  
14 offered by the government against you and you would have  
15 the right to offer evidence on your own behalf.

16 Do you understand that you have those rights?

17 THE DEFENDANT: Yes.

18 THE COURT: At a trial, while you would have  
19 the right to testify if you chose to do so, you are not  
20 under any obligation to testify. Under the Constitution  
21 you cannot be compelled to incriminate yourself. And if  
22 you decided not to testify, the Court would instruct the  
23 jury that they could not hold that against you.

24 Do you understand that you have those rights?

25 THE DEFENDANT: Yes.

1 THE COURT: If you plead guilty and if I accept  
2 the plea, you will be giving up your constitutional right  
3 to a trial and the other rights that I just mentioned.  
4 There will be no further trial of any kind and no right  
5 to appeal or collaterally attack or at any time question  
6 whether you are guilty or not. A judgment of guilty will  
7 be entered on the basis of your guilty plea and that  
8 judgment cannot be challenged. However, you do have the  
9 right to appeal with regard to the issue of sentence.

10 Do you understand that you have those rights  
11 and those responsibilities if you plead guilty?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: If you plead guilty, I am going to  
14 have to ask you questions about what you did in order to  
15 satisfy myself that you are guilty of the charge to which  
16 you are seeking to plead. And you will have to answer  
17 those questions and acknowledge your guilt. Thus, you  
18 will be giving up your right not to incriminate yourself.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: And are you willing to give up your  
22 right to a trial and the other rights that I just  
23 mentioned to you?

24 THE DEFENDANT: Yes.

25 THE COURT: I am going to mark at this time as

1 Court Exhibit 1, the agreement in this case. And I'm  
2 going to ask the government to outline the terms and  
3 conditions of it and the circumstances and conditions  
4 that are made not (inaudible) referred to on the record?

5 MR. RYAN: Judge, that's fine. It's a standard  
6 cooperation agreement with the government. The defendant  
7 is going to plead guilty to the one count information  
8 that has been filed today charging him with conspiracy to  
9 launder money in connection with Joseph A. Costello.

10 He is going to provide cooperation as set forth  
11 in the agreement essentially providing us all of the  
12 information and even, if necessary, potential testimony  
13 concerning his association with Mr. Costello. And to be  
14 forthright and honest throughout.

15 He's also going to forfeit a certain sum of  
16 money that has been negotiated based on his dealings with  
17 Mr. Costello and should the government determine that  
18 he's been full and fairly forthright and provided  
19 substantial cooperation to the government at the  
20 conclusion of the case, after he has completed all of his  
21 past taxes, then we would file a letter with the Court  
22 permitting the Court to sentence him at the Court's  
23 discretion without regard to any sentencing guidelines.

24 THE COURT: Okay.

25 Are those the terms and conditions that you

1 understand in this agreement?

2 THE DEFENDANT: Yes.

3 THE COURT: And are you in agreement with those  
4 terms and conditions?

5 THE DEFENDANT: Yes.

6 THE COURT: And did you sign this agreement  
7 today, Mr. DePetro?

8 THE DEFENDANT: Yes.

9 THE COURT: You reviewed it with Mr. Rabin  
10 before you signed it?

11 THE DEFENDANT: Yes.

12 THE COURT: And this is your signature right  
13 above Mr. Rabin's signature on this document?

14 THE DEFENDANT: That's mine; yes.

15 THE COURT: The government used some of the  
16 terms that are often referred to as consequences of the  
17 plea. There's a maxim term of imprisonment of 20 years  
18 that's by statute. There is a minimum term of zero.

19 There's a maximum supervised release term of  
20 three years, in the event that there's any term of  
21 imprisonment imposed here. If a condition of release is  
22 violated, the defendant may be sentenced up to two  
23 additional two years without any kind of credit for time  
24 previously served in custody and previously served on  
25 supervised release.



1           There's a maximum fine which is the greatest of  
2     \$500,000 or two times the value of the monetary  
3     instrument (inaudible) involved.

4           Restitution is to be determined by the Court  
5     and that will be part of the presentence investigation  
6     report that is prepared by the probation department.  
7     There's also a \$100 special assessment fee. And there is  
8     a criminal forfeiture in the agreement. And (inaudible)  
9     that provision is \$75,000.

10           Is that correct?

11           MR. RYAN: Today, a payment of that much was  
12     made today, Judge, by the defendant. I believe the total  
13     amount is \$180,000.

14           THE COURT: I see. Is that in the agreement?  
15     I didn't pick that up.

16           MR. RYAN: I believe that is, Judge.

17           MR. RABIN: That is, Judge, on page 4 of the  
18     agreement, paragraph G.

19           THE COURT: So, 75 is today and then the  
20     balance would be payable at some other time?

21           MR. RYAN: That's correct, Judge.

22           THE COURT: And the government has the right to  
23     go after the proceeds and other assets (inaudible).

24           MR. RYAN: That's correct, Judge.

25           THE COURT: And that's your understanding?

1 THE DEFENDANT: Yes.

2 THE COURT: I just want to highlight one thing  
3 for emphasis and that is the 5k1 letter. A term of the  
4 agreement provides that the government has to (inaudible)  
5 substantial assistance and otherwise complied with all of  
6 the terms and conditions of this agreement, that they  
7 would issue a 5k1 letter.

8 The thing I want make clear to you is that in  
9 only the rarest of cases, the Court will get involved in  
10 that issue. That's solely between you and the United  
11 States Attorney's Office. It's not the function or the  
12 role of the Court to second guess. As long as the United  
13 States attorney is acting in good faith (inaudible), it's  
14 in their discretion.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: If the government at this time  
18 would please outline the elements of the offense for the  
19 Court.

20 MR. RYAN: Yes, Judge. The defendant --

21 THE COURT: I appreciate your discussion  
22 earlier, which covered a lot.

23 MR. RYAN: Yes, Judge. The defendant is  
24 charged with a conspiracy. That is, he's required to  
25 knowingly and intentionally conspire with others. What

1 he has to conspire to do is to conduct financial  
2 transactions affecting interstate commerce which, in  
3 fact, involved the proceeds of specified unlawful  
4 activity.

5 Here there's a long list uttering a forged  
6 security of an organization; that is, having any of the  
7 checks signed, made out to fictitious companies or  
8 companies that they didn't do business with without  
9 authorization. Theft from the employee benefit fund, as  
10 we've previously discussed, federal program fraud, mail  
11 fraud, any of those things would be the specified  
12 unlawful activity.

13 And they would have to know that the money was,  
14 in fact, involved in some sort of form of unlawful  
15 activity or came from one of those activities. And then  
16 they would have to conduct the financial transaction with  
17 one of the -- any one of the four intents that we  
18 previously discussed. And if they did so, that would be  
19 a completion of the conspiracy that has been charged.

20 THE COURT: Do you understand that a conspiracy  
21 is an agreement to do an unlawful act? The unlawful acts  
22 (phonetic)?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Are you aware of the elements of  
25 the offense to which you'll be pleading guilty?

1 THE DEFENDANT: Yes.

2 THE COURT: You discussed these with Mr. Rabin?

3 THE DEFENDANT: Yes.

4 THE COURT: You understand the nature of the  
5 charge that's now before the Court and the information  
6 that's been filed?

7 THE DEFENDANT: Yes.

8 THE COURT: And do you understand the  
9 consequences of the plea, do you not?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you discussed the sentencing  
12 guidelines with your attorney?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that the  
15 sentencing guidelines are no longer mandatory but that in  
16 sentencing, the district court is required to consider  
17 the applicable guidelines sentencing range, along with  
18 other factors?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that if the  
21 sentence is more severe than you would expect, that you  
22 will still be bound by your guilty plea?

23 THE DEFENDANT: Yes.

24 THE COURT: And you understand that there are  
25 certain circumstances under the issuance of a 5k1 letter

1 (inaudible) where the Court may depart from the  
2 applicable guidelines.

3 THE DEFENDANT: Yes.

4 THE COURT: You understand that, as well.

5 Do you have any questions that you would like  
6 to ask me with regard to the nature of the charge, your  
7 rights or anything else in connection with this plea  
8 (inaudible)?

9 THE DEFENDANT: No.

10 THE COURT: Are you ready to plead?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Rabin, do you know of any legal  
13 reason why your client should not plead guilty?

14 MR. RABIN: No, your Honor.

15 THE COURT: Mr. DePetro, are you satisfied with  
16 the legal representation that your attorney has been  
17 provided to up until this point?

18 THE DEFENDANT: Yes.

19 THE COURT: What is your plea to the  
20 information before the Court?

21 THE DEFENDANT: Guilty.

22 THE COURT: Are you making the plea of guilty  
23 voluntarily and of your own free will?

24 THE DEFENDANT: Yes.

25 THE COURT: Has anyone threatened or forced you

1 to plead guilty?

2 THE DEFENDANT: No.

3 THE COURT: And other than the agreement with  
4 the government as stated on the record and has been  
5 marked as Court Exhibit 1 for purposes of this  
6 proceeding, has anyone made any promises that caused you  
7 to plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: Has anyone made any promise to you  
10 as far as what your sentence will be in this case?

11 THE DEFENDANT: No.

12 THE COURT: I would like you to describe in  
13 your own words exactly what did in connection with the  
14 information.

15 THE DEFENDANT: Between 1995 and 2004, I cashed  
16 checks on behalf of New York Acoustic in order to make  
17 certain cash payroll payments and to avoid union payments  
18 and certain IRS obligations. This was done within the  
19 Eastern District of New York and done to conceal the  
20 source and ownership of the proceeds and to avoid any  
21 financial reporting regarding --

22 (Counsel and client confer)

23 THE DEFENDANT: -- reporting requirements and  
24 the payment of taxes.

25 THE COURT: Before you actually committed the

1 (inaudible), did you conspire with someone to commit  
2 those acts?

3 (Counsel and client confer)

4 THE DEFENDANT: Yeah, with Joseph Costello.

5 THE COURT: And by conspiring, you entered into  
6 an agreement that you were going to (inaudible) this  
7 scheme for the unlawful purposes --

8 THE DEFENDANT: Yes.

9 THE COURT: -- that's alleged in the  
10 information before the Court?

11 THE DEFENDANT: Correct.

12 THE COURT: You avoided filing income taxes and  
13 to avoid filing truthful statements in connection with  
14 your taxes?

15 THE DEFENDANT: Correct.

16 THE COURT: In order to promote and continue  
17 the criminal activity that was the source of these funds.

18 THE DEFENDANT: Correct.

19 THE COURT: What was the criminal activity that  
20 is (inaudible)?

21 THE DEFENDANT: Well, paying cash to employees  
22 and avoiding union problems, IRS, stuff like that.

23 THE COURT: And (inaudible) employee benefit  
24 programs or diverted from an employee (inaudible)?

25 THE DEFENDANT: Well, the employees knew that

1 they were getting paid cash. So, they knew they were  
2 going to get any requirements other than their cash flow  
3 -- other than the cash.

4 (Counsel and client confer)

5 MR. RYAN: Judge, what that means is that --

6 THE COURT: (inaudible).

7 MR. RYAN: Right. What occurs is that when the  
8 union employee works a certain number of hours, he's  
9 entitled -- the employer is required and money is --  
10 whatever profits they have made or whatever money is  
11 generated from that job is automatically in trust in the  
12 employee's account to set to pay the union benefit dues.

13 What happens is by paying union employees cash,  
14 what the employer's do is they take the money that should  
15 have been used to pay for union benefit funds and they  
16 just sue it in the regular course of their business. And  
17 what happens is hat -- since the money is held in trust,  
18 as a matter of law, it's an embezzlement.

19 So, what occurs is even though there's no  
20 disparate accounting or setting aside of the money in  
21 their daily cash flow, as a matter of law, they've  
22 misapplied the money because they haven't paid the union  
23 benefit funds.

24 THE COURT: Do you understand what Mr. Ryan  
25 just said on --



1 THE DEFENDANT: Yes.

2 THE COURT: -- behalf of the government?

3 THE DEFENDANT: Yes, in one way or another. I  
4 avoided to pay those pension funds or whatever.

5 THE COURT: Do you dispute what he said  
6 (inaudible)?

7 THE DEFENDANT: Yes.

8 THE COURT: What do you dispute?

9 THE DEFENDANT: Oh, no, I don't dispute  
10 anything. He's correct.

11 THE COURT: (inaudible) you just said?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you dispute any part of what he  
14 just said?

15 THE DEFENDANT: No, no.

16 THE COURT: Is the government satisfied with  
17 the allocution?

18 MR. RYAN: We are satisfied, Judge. He's  
19 allocuted to the elements of the money laundering  
20 conspiracy with Mr. Costello.

21 THE COURT: At this time, I am going to ask the  
22 government to outline their proof if the case were to go  
23 to trial.

24 MR. RYAN: Judge, if the case were to go to  
25 trial, we have a large number of checks that were given

1 by this defendant to Mr. Costello to be cashed. We have,  
2 from examining the places that Mr. Costello took them, to  
3 process them through the banking system, we have been  
4 able to reconstruct the numbers of the checks and the  
5 amounts. And as a result, we're able to show that these  
6 checks were not appropriately recorded on the New York  
7 Acoustics books and records, that they were diverted and  
8 that many of them were made out to either fictitious  
9 companies prior customers, of which the prior customers  
10 are not aware that the checks were issued in their names  
11 and were otherwise reflecting income or expenses that are  
12 not properly reflected on the books and records of the  
13 company and that Mr. Costello did not file appropriate  
14 currency transaction reports for checks involving more  
15 than \$10,000 in cash. And as a result, the crimes of  
16 money laundering are supported.

17 THE COURT: Is there any part of the  
18 government's statement of proof in this case, if the case  
19 were to go to trial, that you dispute?

20 THE DEFENDANT: No.

21 THE COURT: Based on all of the information  
22 that's been provided here, I find that the defendant is  
23 acting voluntarily and that he fully understands his  
24 rights and the consequences of his plea. And that there  
25 is a factual basis for the plea.

1 I therefore recommend to Judge Wexler that he  
2 accept the plea of guilty to the information now before  
3 the Court identified as information 06-cr-210. So, that  
4 completes the plea proceeding.

5 THE DEFENDANT: Thank you very much, Judge.

6 THE COURT: The only other matter is the  
7 presentence investigation report. And counsel and his  
8 client should check in with probation. Just let them  
9 know what happened here today.

10 MR. RABIN: Yes.

11 THE COURT: And they'll set up appointments and  
12 so forth (inaudible) investigation as far as the  
13 presentence report.

14 MR. RABIN: Yes, your Honor.

15 THE COURT: I just want to explain to the  
16 defendant what that involves. It's a very thorough  
17 report will be prepared by the probation department.  
18 They'll speak with the United States attorney and the  
19 federal agents that are involved here. They'll also seek  
20 to speak to you, any witnesses that you may have, their  
21 relevance (inaudible). And that's something that you and  
22 your attorney have to discuss, as far as the extent of  
23 which you want to cooperate with that investigation.

24 Again, they will prepare a report that Judge  
25 Wexler will consider prior to imposing sentence in your

1 case. In this case, the sentence (inaudible) information  
2 contained in that document. You will be provided with a  
3 copy before the sentence. And if there's anything in  
4 that document that's inaccurate in your opinion, or in  
5 your attorney's opinion, any factual matter or other  
6 legal matter, you have the right to challenge what's said  
7 in there and (inaudible) ruling by the judge as to  
8 whether it's right or wrong (inaudible). You could check  
9 on that.

10 Anything further from the government?

11 MR. RYAN: No, Judge, the defendant just has to  
12 be set -- bond has to be set.

13 THE COURT: This is an initial appearance.

14 MR. RYAN: That's right, Judge.

15 THE COURT: What (inaudible) on bail?

16 MR. RYAN: Judge, we would ask for a \$1 million  
17 unsecured bond with travel restricted to the continental  
18 United States. The defendant has a passport. We would  
19 ask counsel to surrender it to pretrial services by the  
20 end of next week. And other than that, Judge, there  
21 would be no limitations.

22 THE COURT: (inaudible)?

23 MR. RABIN: That's acceptable.

24 THE COURT: All right. So, bail will be  
25 (inaudible) April 7 is next Friday and he'll surrender

1 the passport. You can do it any time before that. And  
2 it seems -- where is the (inaudible)? It's easier to do  
3 it in Brooklyn?

4 MR. RABIN: In Brooklyn, it would be; yes.

5 THE COURT: (inaudible).

6 MR. RABIN: Fine, thank you.

7 THE COURT: (inaudible) lie to the Court. So,  
8 if anyone (inaudible) government.

9 THE DEFENDANT: Very good.

10 THE COURT: Okay. Anything further from the  
11 government?

12 MR. RYAN: Nothing further, Judge. Thank you  
13 very much.

14 MR. RABIN: Thank you.

15 THE DEFENDANT: Thank you.

16 (Matter concluded)

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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this  
26th day of April , 2006.

*Rosalie Lombardi*

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Rosalie Lombardi  
Transcription Plus II

Transcription Plus II

Rosalie Lombardi